APERTURA DE LA SESION

Se abre la sesión a las 3:35 pì m., ocupando el estrado el Presidente, Hon. Claro M. Recto.

EL PRESIDENTE. Se abre la sesión.

DISPENSACION DE LA LECTURA DE LA LISTA Y DEL ACTA

SR. MARAMARA. Sr. Presidente.

EL PRESIDENTE. Señor Delegado.

SR. MARAMARA. Pido que se dispense la lectura de la lista y del acta y que esta se de por aprobada.

EL PRESIDENTE. Tiene la asamblea alguna objeción a la moción? (Silencio). La Mesa no oye ninguna. Queda aprobada.

DESPACHO DE LOS ASUNTOS QUE ESTAN SOBRE LA MES DEL SR. PRESIDENTE.

EL PRESIDENTE. Léanse los documentos recibbidos.

EL SECRETARIO, leyendo:

P E T I C I O N E S

Resolution of the Municipal Council of Malabon, Rizal, adhering to the precept submitted by Delegate Ortega, prohibiting the entail of big estates in few hands. (P. No. 201).

THE PRESIDENT. To the Sponsorship Committee.

Resolution of the Municipal Council of Malabon Rizal, requestion the adoption of a constitutional precept granting more autonomy to municipal governments. (P. No. 202).

THE PRESIDENT. To the Sponsorship Committee.

CONTINUACION DE LA DISCUSION DEL PROYECTO DE CONSTITUTION.

EL PRESIDENTE. Estq en orden la continuacion de la consideracion del Proyecto de Constitución.

SR. ROMUALDEZ. El Delegado Ventura va a hablar.

SPEECH OF DELAGATE VENTURA IN FAVOR OF THE COURT OF APPEALS

MR. VENTURA. Mr. President and Gentlemen of the Convention: The issue to be determine by this august body is whether we should have a Court of Appeals or Court of Appeals. I should like to avail myself of the portion of the argument of Dr. Jose P. Laurel, Delegate from Batangas, which appears on

on page 17 of his memorandum an the burden of my argument. This reads as follows:

"If we have to accept the introduction of intermediate appellate courts in the Islands, we should then choose that system which would give said courts final appellate jurisdiction over all cases cognizable by them, but at the same time retaining the supervisory authority of the Supreme Court over any or all of the decisions of said courts either by way of certiorari or by an order of transfer. For it is essential to the stability of the state that there be one ultimate and controlling court whose opinion will have binding force upon a all inferior courts. This will assure more harmony and coeordination in the final judgment of our courts of justice and thus help foster populat confidence in the wisdom and probity of our judges."

Gentlemen of the Convention, this is a clear proof that the Delegate from Batangas is not altogether against the establishment of the Courts of Appeals in our country because he himself admits and suggest that such a Court should be established in this country. He himself admitted las night that he was one of those who advocate the creation of the intermediate court of appeals way back in 1929 and which was vetoed by the Governor-General. That Bill is No. 261 of the Philippine Senate which was passed on November 7, 1929. He himself proposed in that Bill which was passed unanimously bu both branches of the Legislature that a Court of Appeals should be established which should have "exclusive appellate jurisdiction in all cases and special proceedings properly brought before it from Courts of First Instance and from any other tribunal from whose judgment the law shall provide an appeal to the Court of Appeals; which appellate jurisdiction shall extend to all cases and proceedings not hereby authorized to be appealed to the Supreme Court, and the judgments, orders, and decrees of the Court of Appeals shall be final in all such cases and proceedings.""In any case," says section 3, "civil or criminal, in the Court of Appeals, it shall be competene for the Supreme Court of the Philippine Islands, upon the petition of any party thereto, to req ire, by certiorari or otherwise, either before or after judgement or decree by the Court of Appeals, that the cause be certified or transferred to the Supreme Court for review and determination by it with the

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power and authority and with like effect as if the cause has been brought there by appeal. No judgment or decree of the Court of Appeals shall be subject to review by the Supreme Court as herein provided, unless application therefor be duly made within thirty days after the entry of such judgment or decree."

The fundamental principal that underlies our argument for the creation of the Court of Appeals is that there be a Court of Cassation or, in other words, that the Supreme Court of the Philippine Islands should be constituted as a court where question of law shall be termined and that the Court of Appeals shall have final decision on questions of fact in in those cases that are prescribed by law to come under its jurisdiction as prescribed by in the Senate Bill No. 261 advocated by Dr. Laurel, Delegate for Batangas. The reason for having a Court of Cassation where questions of law shall be determined only on in most cases, is to secure uniformity in the decisions of our courts in the interpretation of our laws. A uniformity in our jurisprudence is absolutely necessary as a set anchor for the provilege and rights of Filipino citizens constitute the bulwark of the liberties of the Filipino people. Without uniformity of the decisions we can never expect a confidence on the part of the people of our country. Such thing has been happening and it is happening at the present time. The attorneys or members of the Bar know full well that there is a great confusion in the decisions of the Courts, of our Supreme Court, both in matters of criminal law and civil law. Many cases there are where an attorney defending one side of the case, I can cite as many cases in defense of his contention, and if that is the other side, I can also cite other cases in defense, and that is one of the decisions of the Supreme Court in many cases. We take, as an example, way back in the e early days of the American occupation. Referring to decisions and the interpretation of our land laws, or the Spanish Royal Decrees, governing the granting of titles to citizens of the

Philippine Islands, in Volume 3 of the Philippine Reports, in the case of Valenton vs. Murciano, it was decided in a strict sense, that no person shall ever acquire public agricultural land unless he shows a certificate issued by the government to him for whatever length of time he has occupied that property. But in Volume 41 of the Philippine Reports, many years later, the said Supreme Court decided that a man who has been in possession of a public agricultural land, in the case of Cariño, a man who has been in possession for many years, say fifty years of public agricultural land, is entitled to the possession of that property by reason of prescription. Our Supreme Court, in the interpretation of Land Registration Law, which is definite in its provision, provides that unless a right of transfer or conveyance of property is duly registered in accordance with land law, act 496, that right is nor recognized and no transfer is recognized. That is decided in the case of Tuason vs. Raymundo, Volume 34 of the PhilippineReports. But later on, in the case of Lancy v. Uangco, decided in 1930, the same issue was presented before the Supreme Court and decided that when the party is aware of the existence of that right, even that exists, that right is considered transferred. Well, the Supreme Court makes that decision, and in many other cases, so that the determination of the legal question was set forth in a meeting of the Philippine Bar Association is, I repeat, sometimes a case, a sort of a case of chance, a gambling case. I should not like to be understood as making a reflection on the ability of the members of our Supreme Court. These contrsdictions of the doctrine laid down by the Supreme Court is due to the fact that decisions are made by so many divisions in the Supreme Court and because of the enormous amount of cases to be decided by the Supreme Court, as was stated by Justice Romualdez las night that 80 per cent of the time employed by the justices goes to the examination, study and determination of questions of fact and only about 20 per cent to the question of law, and I know it to be true.

nd that situation can only be remedied by making our Supreme Court have the same jurisdiction and power as the Supreme Court of the United States where cases are taken by writ of error and questions of law alone are to be decided.

Mr. President, we should not be misunderstood in this respect as many delegates believe that all cases shall always be raised to the Supreme Court, and both questions of fact and law shall always be raised by an attorney. It is true, but you must remember not all the cases will be admitted by the Supreme Court to decide when the same is brough by a writ of error or by a writ of certiorari, because there shall always be required that two or three members of the Supreme Court to decide as to whether or not the appeal of that case be certiorari or writ of error is admissible or not, or in ordinary parlance, that theSupreme Court thorugh oe, two or three justices, shall determine whether it accepts or refuses to receive the appeal. In that case, therefore, not all the cases will be arrived at to the Supreme Court except when a question of law merits a serious consideration. The distunguishd delegate for Batangas, Dr. Laurel, was always harpoing on the argument that the legislature should be left to establish an intermediate court of appeals or inferior court of appeals and that we should not bind ourselves in establishing the courts of appeals. I will answer this argument. In making that Contention, Delegate Laurel emphasizes the fact that the Constitutional Convention of America never thought of necessary to establish the courts of appeals and leave it to Congress the power to establish the inferior courts or courts of appeals, but I should say that the constitutional convention of America cannot be compared with the constitutional convention that we have. And the constitution then existing at the time cannot be compared with the conditions that confront us at the present time. In the first place, when the Constitutional Convention of America was in session, or when the constitution was being framed, there

was no history, judicial or juridical history, upon which the constitutional members could lean upon. There was no reason why they would provide for the courts of appeals because they did not have a problem of congestion of cases that we have now in our Supreme Court. In fact, for the first time that the Supreme Court of America met in 1780 there was not a single case to be determined when that Supreme Court was organized. So much so that that the only first Supreme Court of the United States did on i its first session was to appoint a clerk of court and was dismissed for lack of work to do. But at the present time, we have 2,000 cases every year to be disposed of by our Supreme Court.

In 1801 when Jona Marshall took the place of Chief Justice Jay, there were only ten cases awaiting in the docket for the decision of the Supreme Court. Why, there was no comparison in the number of cases that await the decision by our Supreme Court. With reference to condisions then existing, I mean to the composition, the Delegate for Batangas said that the National Assembly can very well establish the court of appeals or that the National Assembly should be left to study the advisability or wisdom of establishing courts of appeals. That matter should be left to the National Assembly. The constitution has sufficient duty, sufficient power to determined that question. We have been chosen by the people to lay here the fundamental law of the land and to provide in that fundamental law of the land the framework of the judicial department of the government, such framework as will complete our judicial system. I do not say that I advocate a detailed statement of the judicial scheme of our government; but we should not wait for the National Assembly to determine the question when the august body is composed of able men to determine that question. We have in our Convention well known legal luminaries who can very well determine what should be the form of our judicial department. We have men like Dr. Laurel, himself an authority on Constitutional Law; we have Delegate Romualdez, Delegate Francisco

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Delegate Romualdez, Delegate Francisco, Delegate Orense, Delegate Lim and other attorneys, members of the Bar of the Philippine Islands, we can never be sure that we shall have men able to discuss the advisability of the judicial department of the Gverment. We can never be sure that these men will be in the National Assembly and will incprporate in our statute books the same judicial system that we want to established at t the present time. Delegate Laurel himself in his memorandum stated that the purpose of Senate Bill No. 261 he advocateed was to relieve the Supreme Court of the heavy burden that it had. The same argument I shall repeat here, that it is the purpose to establish a Court of Appeals if you please, if you do not agree to the establishment of two or more courts of appeals. The only question to be determine now is whether or not we shall ever have an intermediate Court of Appeals. Let it be one if you please, for the sake of economy or for the sake of simplicity. But the thing is that we must have a court of Appeals so as to make the Supreme Court of the Philippien Isands a tribunal of cassation. This will relieve very much our courts and also the Supreme Court of the enormous number of cases to b be disposed of every year. Delegate Laurel also said that it is bad policy to establish inferior courts in detail in the organic Act. He speaks of details. There may be details in the draft that we could eliminate in order to avoid his objection. But the fundamental principles should be adhered to that we should have a Supreme Court of cassation and by so doing we should have a Court of appeals. If we speak of details that he does not favor I should like to ask him: Is not the judicial brqnch of the government as co-extensive, co-equal and as important as any other Department of government like the legislative or executive branch of the government? Why is it, I ask, Gentlemen of the Convention, that in our dsaft we even provided that the National Assembly shall appoint a sergeant-at-arms and a clerk? We went into that details which is ab-

solutely unnecessary. If we consider that the establishment of the court of Appeals in our draft would make our constitution voluminoys and make it unnecessary just to go into details I find that it is preposterous to state that the National Assembly shall appoint clerk and a sergeant-at-arms, because it is preposterous to go into details in our constitution. It is unnecessary to state that that body should appoint a clerk and yet we say that to creat the Court of Appeals is not an unnecessary detail. We also provide that the National Assembly shall have a journal of its proceedings. Why, it is absolutely unnecessary to state that in the constitution, and yet we put in there, because a legislative body must have always a record of its proceedings and yet we state that it should have and yet we never objected to the insertion of that in the draft of our constitution. Delegate Laurel objects to the insertion of that in our draft. But when it comes to the insertion of the Court of Appeals in our draft, he says that it is an unnecessary detail. I do not see the logic of the argument. He ask s in his memorandum - I am referring to Delegate Laurel - will it suits the needs of the people if we creat the Court of Appeals in our draft. Why, yes, it meets the crying need of the people. "Is there any absolutely necessary to put it in the draft now?", he asks. Why, yes, because if there was a necessity of creating an intermediate court of appeals way back in 1929, with more reason we should put it now in 1935, now that we are preparing the draft. There is no reason why it was necessary in 1929 to creat a Court of Apeals and not absolutely necessary to creat the same in 1935. There are more cases to be dispoesed of by the Supreme Court. He speaks of the expenses that may be incurred in the Court of Appeals. But I say that he did not have that in mind when he advocated the creation of the intermediate court of appeals in the Senate. He says that there is no parity between the two because the draft advocates two or more courts of appeals.

court of appeals. I say that is not the fundamental confronting the Convention. The question is whether we should have a court of appeals. Whether one or two does not matter. We can improve upon the provisions of the draft. The thing is that we should have a court of appeals and make the Supreme Court a court of cassation. And I find that there are at present eleven members of the Supreme Court. Suppose we reduce the number to seven as it should be because it is preposterous to have more justices in the Philippine Islands, a small court as it is, compared with nine justices of the Supr Supreme Court of a great nation like the United States. We should reduce that number to seven and then appoint three members of the court of appeals with a salary of 13,000 pesos per annum and we can get same amount of money annually by reducing the number of the members of the Supreme Court now to seven which can be applied to the salaries of the three members of the court of appeals that may be created.

MR. MONTAÑO. Mr. President, will the gentleman yield?

THE PRESIDENT. The gentleman may yield, if he so desires.

MR VENTURA. Willingly.

MR MONTAÑO. Do you mean to say that the purpose of establishing courts of appeal is relieving the Supreme Court from its burden of heavy appeals, a big number of appals coming from inferior courts?

MR. VENTURA. That is one of the reasons, but the most important and fundamental is to have a uniformity of doctrines laind down by our Supreme Court which, you as a practicing attorney, I know, should like to have in our courts, so that you should always have a constant guide in the defense of your cases.

MR. MONTAÑO. Yes, precisely, I am going to ask questions about my experience. As the first reason of establishing courts of appeals, that is to say the relieving of the Supreme Court of its burden of big number of appeals from the courts of first

instance, I would ask this question: Do you know the reason why there is a big number of appeals coming from the court of first instance of the Philippines?

MR. VENTURA. Why? There are many reasons.

MR. MONTAÑO. Would you please state the main reason why?

MR. VENTURA. Yes, sir. In the first place, there is a great increase of cases from the year 1904 up to the present time, because there is a great deal of increase in the number of population that we now have; and the more people you have the more litigations you have. No question about that. We have made progress that gave rise to many problems in our country - economic, financial and political - and we have to have many litigations and many rights to property and rights to person.

MR. MONTAÑO. Is not the increase sudden that it has been noticed sometime ago only?

MR. VENTURA. Well, that word, "sudden" is a relative term. That word "sudden" is a relative term. Of course, when the ball falls to the ground, that is sudden; but there is really a great increase in the number of cases and if necessarily it must not be from No. to 1000 immediately, but there must be a relative increase.

MR. MONTAÑO. I would like to have the positive information.

MR. VENTURA. The relative increase in the number of cases, as I have already told is the reason. The progress in our country accounts also for the increase of cases. I will give you concrete example. Before the passage of the Cadastral Law No. 2259, there was nothing about as cadastral surveys: Compulsory registration of titles to property. When that law was passed and there were lands surveyed and titles were registered by the thousands, lots have to be registered whether you like it of not, and that the increase in the number of cases so much that they created the so-called cadastral judges before.

MR. MONTAÑO. Yes, but I should like to get some facts from the speaker. According to your statistics that you must p possess, in what cases do appeals consists - criminals, civil or cadastrals?

MR. VENTURA. Why, in all cases.

MR. MONTAÑO. Generally in the Supreme Court?

MR. VENTURA. In the Supreme Court, there are, I believe more appeals. In civil cases there are twice as many as there are criminal cases. In other words, one-third only of the number.

MR. MONTAÑO. Do you mean to say that, according to your facts, there are but few appeals in contested cases?

MR. VENTURA. But in civil cases, both the dadastral and the ordinary civil cases put together, I would say that there are twice as many ~~xas~~ there are criminal cases or two-thirds.

MR. MONTAÑO. In what year was that noticed the great increased?

MR. VENTURA. In the latter years - 1932, 1933, and 1934.

MR. MONTAÑO. Therefore, before those years, it was not noticed?

MR. VENTURA. It was noticeable, but not so much.

MR. MONTAÑO. To which, it is not a good parallel to the increase of population in the Philippines?

MR. VENTURA. Of course not necessarily, but because of the increase of cases not necessarily (I told you, because I did not give you only one reason, I gave you many reasons), in proportion to the increase of population, but in proportion to the march of progress in a counry. Now, what is your point your are driving at?

MR. MONTAÑO. Does not the gentleman realizes that most of the appeals consiste int he misappreciation of facts of law?

MR. VENTURA. Well, most of these appeals are due to the fact that attorneys do not agree to the decisions of the lower

courts; that is all, as in any other case. Simply you do not agree to the decision, you appeal right or wrong.

MR. MONTAÑO. Does not the gentleman realize the fact that most judges of the courts of first instance now do not render decisions pointing out the principles as raised by both parties in he courts?

MR. VENTURA. Well, I should not make an answer for the judges.

MR. MONTAÑO. A ccording to your experience as attorney?

MR. VENTURA. I said that even before 1932 the judges of the courts of first instances did not also discuss the question of law, so your comparison "ni pega ni con cola."

MR. MONTAÑO. Do you mean to say that both parties appeal or the attorneys appeal wheter right or wrong, does not this reflect no faith on the part of the lower courts?

MR. VENTURA. May be, that is true, partly; but I will tell you the reason. Simply because they know that if they appeal to the Supreme Court of the Philippines, they may have the chance, o it is a question of chance - they may have the chance of winning the cases, as it is true even there is already a decision rendered against them, and it has come to be true.

SR. SALAZAR. V. Sr. Presidente, para algunas preguntas al orador.

EL PRESIDENTE INTERINO. El orador puede contestar, si le place.

SR. VENTURA. Si, señor.

SR. SALAZAR, V. De acuerdo con el proyecto, el Tribunal de Apelacion tendra la misma jurisdiccion en cuanto a apelaciones que la que ahora posee la Corte Suprema?

SR. VENTURA. Si, señor; pero en mi discurso, no me he limitado a las disposiciones del "draft" sino que me he limitado a la discusion de la cuestion planteada anoche por el Presidentr de la Convencion, de si o no debeos tener Cortes de Apelacion en de

es decir, que podemos mejorar las disposiciones del draft para obviar las objecciones que S. S. pueda tener.

SR. SALAZAR V. Entonces S. S. no esta conforme con la distribucion de jurisdiccion que aparecen en el draft?

SR. VENTURA. No estoy muy conforme, y asi es que el Proyecto de Ley No. 261 delSenado, tal como fue defendido por el entonces Senador Laurel, parece que es mejor en cuanto a la distribucion de podeSes o jurisdiccion que aparecen en el draft.

SR. SALAZAR, V. Esta S. S. conforme con la creacion de dos Tribunales de Apelacion?

SR. VENTURA. Tambien, pero para eliminar la o bjecion que tenga la Convencion en la cuestion del aumento de gastos, podemos ya abogar por la creacion de un Tribunal Intermedio de Apelacion era fines de economia, y autorizar a la Asamble Nacional que tenga el poder de crear mas, cuando las necesidades asi lo requieran.

SR. SALAZAR,V. Bueno; voy a ir concretamente al caso duq queria. En ese de un asunto apelado a unTribunal de Apelacion puede dictar una decision en cuanto a una cuestion de derecho e en un asunto apelado del Juzgado de primera instancia, si su decision no se apela a la Corte Suprema, tiene que ser considerada como una doctrina directriz, para la inerpretacion de las leyes.

SR. VENTURA. En el juzgado de.....

SR. SALAZAR. De apelacion.

SR. VENTURA. Si, señor.

SR. SALAZAR, V. Supongamos que sostengamos el establecimiento de dos tribunales de apelacion y los dos tribunales de apelacion dictasen dos cotrinas completamente distintas para una materia determinada, que doctrina es la que debe seguirse?

SR. VENTURA. Eso es posible, pero you contesto a eso: para eso sirve la Corte Suprema, para actuar de tribunal de casacion.

SR. SALAZAR, V. Pero si los abogados y los clientes no

apelan a la Cote Suprema?

SR. VENTURA. Entonces, cuando se suscita o apele esa esa cuestion refiriendose al caso de la corte intermedia y comparando con la decision de la otra corte, intermedia, entonces se suscita esta cuestion y la Corte Suprema puede determinar.

SR. SALAZAR, V. Cree S. S. que de acuerdo con el draft se podra elevar un asunto del tribunal de apelacion a la Corte Suprema, sin las instancia de una parte, de acuerdo con el draft?

SR. VENTURA. Si, se puede.

SR. SALAZAR. Vi No señor, sino a intancias de una parte.

SR. VENTURA. Pero si ninguna de las partes apela de la decision del tribunal de apelacion, la misma tendria que ser firme y decisiva y la doctrina sentada tendra que ser respetada por todos los tribunales inferiores. Supongamos que haya dos doctrinas distintas, que doctrina debemos seguir?

SR. SALAZAR. V. Pues por de pronto no es doctrina, eso es lo que que llaman "Stare decisis" nada mas.

SR. SAGUIN. Para algunas preguntas al orador.

EL PRESIDENTE INTERINO. El orador puede contestar, si le place.

SR. VENTURA. Si, señor.

SR. SAGUIN. La eficacia del tribunal de apelacion, es un hecho ya comprobado en todos los paises?

SR. VENTURA. Si, señor.

SR. SAGUIN. No es cierto lo que dice el memorandum del Dr. Laurel que en los Estados Unidos ya se han enmendado varios veces las leyes sobre tribunales de apelacion?

SR. VENTURA. Eso en algunos Estaods.

SR. SAGUIN. En lo que respecta a la jurisdiccion de los tribunales?

SR. VENTURA. Eso es cuestion de detalles ya y creo que ha tenido en cuenta eso el mismo Dr. Laurel cuando abogo en la Le-

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gislatura por la creacion de la Corte Intermedia, cuando estaba en el Senado. Sin embargo, no adujo esa razon cuando hablo sobre este proyecto.

SR. SAGUIN. Yo prescindo de las opiniones personales del Dr. Laureà cuando era senador. Yo estoy pidiendo aclaraciones sobre esta cuestion. S. S. décia que en algunos Estados se han encontrado grandes inconvenientes y que se ha introducido lamar de cambios en la cuestion de la distribucion de la jurisdiccion.

SR. VENTURA. Eso se debe a la distribucion que haga un Estado, por ejemplo, en el draft hay muchas proposiciones con r respecto a la distribucion de la jurisdiccion de las cortes intermedias, mientras que en otros Estados tienen tambien otros medios de distribucion de la jurisdiccion, y entonces, esa cuestion de distribucion de la jurisdiccion de poderes debemos estudiarlo debemos estudiarlo bien. Es cuestion de detalles y debe os estudiar cual de esbos Estados ha tenído la mejor distribucion de poderes.

SR. SAGUIN. Podria S. S. llamar a eso cuestion de detalles pero tendremos tambien que detallar en nuestra constitucion.

SR. VENTURA. No hay necesidad. Podemos decir en el proyecto que los poderes se distribuyan segun lo determine la Asamblea Nacional.

SR. SAGUIN. Suponiendo que la distribucion que vamos a hacer sobre la jurisdiccion ha satisfaga tanto de la Corte Suprema como del tribunal de apelacion, incurramos en algun error y que la distribucion que hagamos no resulte satisfactoria, no cree que seria un inconveniente grande el que incertamos en la Constitucion este asunto y que seria mas preferible dejar a la Legislatura esa cuestion para que si comete algun error lo pueda corregir?

SR. VENTURA. Por eso viene esta contestacion. Con respecto a la distribucion de poderes, podemos eliminar eso; pero debemos proveer en la Constitucion que haya una corte

intermedia de apelacion, para que la Asamblea Nacional provea la distribucion de podres y si hay algun error, como uested podra entonces la Asamblea Nacional corregirlo despues.

MR. PEREZ, J. Mr. President, will the gentleman yield?

THE PRESIDENT. The gentleman may yield if he so desires.

MR. VENTURA. illingly.

MR. PEREZ,J. The gentleman has argued that one of the reasons for advocating the creation of courts of apeals is tht the court of appeals and our Supreme Court will not promulgate conflicting decisions.

MR. VENTURA. Yes, sir; that is true.

MR. PEREZ. J. Now, is the gentleman not aware of the fact that in the United States there are circuit courts of appeals and yet the Federal Supreme Court has promulgated many conflicting decisions?

MR. VENTURA. Not conflicting. The Federal Supreme Court? It has not been known that the Federal Supreme Court has contradicting decisions. The district courts may have, the circuit courts may have, but not the DFederal Supreme Court of the United States.

MR. PEREZ. J. Now, is not the gentleman ware of the fact that Chief Justice Marshall has ruleed that the power to attach has the power to destroy, while Justice Homes, denied that?

MR. VENTURA. Because he is of the dissentinf opinion.

MR. PEREZ.J. No, Justice Marxhall has already died long ago before the time of Justice Homes.

MR. VENTURA. I mean, he dissented from that opinion. Because it has always been the practice of Justice Holmes, I know to dissent from theories anunciated by Justices prior to him.

MR. PEREZ. J. But the decisions of Justice Holmes were concurred in by the Supreme Court subsequently after the Supreme Court, through Justice Marshall, had given that opinion.

intermedia de apelacion, para que la Asamblea Nacional provea la distribucion de podres y si hay algun error, como uested podra entonces la Asamblea Nacional corregirlo despues.

MR. PEREZ, J. Mr. President, will the gentleman yield?

THE PRESIDENT. The gentleman may yield if he so desires.

MR. VENTURA. illingly.

MR. PEREZ,J. The gentleman has argued that one of the reasons for advocating the creation of courts of apeals is tht the court of appeals and our Supreme Court will not promulgate conflicting decisions.

MR. VENTURA. Yes, sir; that is true.

MR. PEREZ. J. Now, is the gentleman not aware of the fact that in the United States there are circuit courts of appeals and yet the Federal Supreme Court has promulgated many conflicting decisions?

MR. VENTURA. Not conflicting. The Federal Supreme Court? It has not been known that the Federal Supreme Court has contradicting decisions. The district courts may have, the circuit courts may have, but not the DFederal Supreme Court of the United States.

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MR. PEREZ. J. But the decisions of Justice Holmes were concurred in by the Supreme Court subsequently after the Supreme Court, through Justice Marshall, had given that opinion.

MR. VENTURA. You cannot allegee that as a reason now, because the facts that were decided when the case was determined by Justice Holmes were not the same facts presented to Justice Marshall when he decided the case.

(Continuing). One of the last argments of Delegate Laurel last night was that the dispatch of cases by the Supreme Court can be solved, not by the creation of Courts of appeals, but by the members of the Supreme Court themselves. He said tht id depends upon the ability and the diligence of the members of the Supreme Court. That is true. But I say that the age of the members of the Supreme Court were young duri during all that time, and up to the time that the Constitution fixes the maximum limit, we could expect that the members of the Supreme Court can dispatchx the same number of cases that they could at the age of forty, which is the minimum age, when they reach the age of sixty-five or seventy, which is the maximum age provided for by the Constitution. He said that the slow dispatch of cases by our Supreme Court before was due to the fact that most of the members of the Supreme Court of our country are old. But he said that if we begin at the time of thecommencement of the Commonwealth with the young blood - men who are devoted to their duty, they could dispatch the cases of the Supreme Court with more rapidity. I say in answer to that argument, that if all the members of the Supreme Court were forty years, all of them at the time they are appointed or begin in the organization of the new Supreme Court, and should not change in age, that would be possible. But I say that as ye the years roll on and they reach the age of 65% I can say without fear of contradiction that they can not dispatch the same number ofcases astheycould when they were at the age fx of 40.

SR. VENTURA?, Si la misma Legislatura, compuesta de hombres mejores, no ha podido remediar esa situacion, y la Corte Suprema tampoco la haya remediado. Quiero decir que con la ayuda de S. S. y de todos los miembros de esta Convcion podemos de algun

modo remediar esa situacion, por medio de la creacion del tribu nales intermedios de apelacion!

SR. KAPUNA? Suponiendo que se crean cuatro puestos mas en la Corte Suprema, dos para lo criminal y dos para lo civil, que se dediquen exclusivamente a determinar cuales sonlos hechos discutidos y cuales son los que no estan discutidos, y con la apelacion de los abogados de ambas partes, simetan despues el asunto a la Corte! Son una especie de relatores, simples empleados,. Por ejemplo, cienen una causa estos empleados la estudian, la examinan y determinen despues cuales sonlos hecos admitidos y cuales son los hechos dicsutidos y, con la aprobacion de las partes o de sus abogados, someter esos hechos a la Corte Supremm. No Cree S. S. que se consiguiria descongestionar de asuntos a la Corte Suprema?

SR. VENTURA. No es factible eso. Los secretarios privados de los magistrados, cuya mayoria son abogados, ya se han oido de que algunos de elos preparaban la relacion de hechos, lo cual siempre han suscitado protestas.

SR. KAPUNAN. Pero aqui lo que ocurriria es que se somete la relacion de hechos con la aprobacion de las partes interesadas dus o de sus abogados.

SR. VENTURA. Pero es el caso que no se conformarian las partes con la decision de un relator. Para qe haya conformidad en la Corte Suprema es menester que lo haga el mismo magistrado.

SR. KAPUNAN. Los magistrados no tendrian necesidad de revisar papeles, solamente tendran que estudiar las partes materiales y controvertidas en una causa.

SR. VENTURA. Pajo los reglamentos actuales de la Corte Supreme, S. S. sabe que en la preparacion de los alegatos se deben hacer constar los hechos admitidos por el y solamente señalar los puntos en que no esta conforme; sin embargo, no ha resuelto la situacion.

SR. KAPUNA. No Sabe S. S. que estos alegatos de una y otra parte nunca llegan a estar conformes en la cuestion de hechos

ni en la cuestion de derecho, de tal manera que la Corte Suprema se ve siempre obligada a estudiar pagina por pagina dichos alegatos.

SR. VENTURA. Precisamente esa alegacion de S. S. resulta un argumento en favor de los tribunales intermedias de apelacion.

SR. KAPUNAN. Si los dos fueramos abogados en una causa, yo estare conforme en que un hecho se admitido.....

SR. VENTURA. Pero S. S. nada mas estara conforme tal cea, pero la mayoria de los abogados no lo estaran, poeque le dejan a la Corte Suprema para que esta decida, porque una vez admitida una causa, S. S. estara etado.

SR. KAPUNAN. S. S. ha dicho que se crean las cort4s de apelacion para obtener uniformidad de doctrina por la Corte Suprema. Pero no sabe S. S. que durante los años de la Mancomunidad, si quereros esos tribunales tendriamos entonces los xñx que yo llamaria recasacion?

SR. VENTURA. En casos muy raros.

SR. KAPUNA. Pero son casos. Que efecto produciria eso?

SR. VENTURA. La ventaja seria mayor que la desventaja que S. S. Alega.

SR. KAPUNAN. Bajo una cuestion de principio, una corte suprema de casacion quiere decir que la doctrina es final?

SR. VENTURA. Igual. La misma cosa ocurriria. Bajo a dejar tal como esta la situacion. Acaso no se apela la desicion de la Corte Suprema de Filipinas para la Corte Suprema federal, y sin embargo, decimos que s ginal la decision de la Corte Supre-m de Filipinas?

SR. KAPUNAN. Seria buena la idea de S. S. cuando seamos independientes' pero en el estado en que nos encontramos vamos a tener casacion y recasasion.

SR. VENTURA. Vamos a dejar tal como esta el sistema actual. No es verdad de que se apela siempre contra la decision dicta.-

da por la CorteSuprema de Filipinas?

SR. KAPUNAN. Pero es igual; apelamos a laCorte Suprema. Pero eso no es el caso.

SR. VENTURA. Siguiendo la linea de su argumentacion de que no es final la decision de la Corte Suprema de Filipinas.

SR. SAGUIN. Sr. Presidente, para una cuestion de orden. Pediria que los caballeos hablen con orden, porque parece qe los tagigrafos no van a poder tomar notas de lo que hablan los dos oradores a la vez.

SR. KAPUNAN. S. S. creo que tiene tambien á la vista el argumento de que el Presidente de los Estados Unidos o elCongreso tiene control sobre nuestras leyes.

SR. VENTURA. Segn la ley Tydings-McDuffie.

SR. KAPUNAN. Suponiendo que la Corte Suprema lanza una doctrina y que por cualesquiera causa la ley sobre que se fundo la doctrina llega a ser desaprobada por el Presidente de los Estados Unidos, cual seria el efecto de la doctrina?

SR. VENTURA. Quiere S. S. decir que la ley ha sido desapro bado por el Presidente?

SR. KAPUNAN. Aprobada por nuestra Asamblea y desaprobada p por el Presidente. Y a tener de dicha ley, la Corte Suprema lanza una doctrina. Sera final esa doctrina si no tuviermos a la Corte Suprema de America. el Presidente y al Congreso de los Estados Unidos.

SR. VENTURA. Pero no sabe S. S. que las leyes aprobadas por la Legislatura se someten al Presidente de los Estados Unidos?

SR. KAPUNAN. No todas las leyes.

SR. VENTURA. Eso no es argumento en contra.

SR. KAPUNAN. Y eso llama S. S. uniformidad?

SR. VENTURA. No estoy conforme con S. S.

(Continuing). Mr. President and gentlemen of the Conventon: I beseech you to considere the reasons that I have stated for the creation of the courts of apoeals, if you

please; if you are not agreeable to the creation of two or more courts of appeals, we can improve the provisions of the draft, and if you do not agree to the distribution of powers, that can also be eliminated ane also to the elasticity of a provision in the draft objected to by Delegate Laurel. That can also be elimnated by the fundamental principle so that the Supreme Court should be left and allowed to be a court of cassation.

DISCURSO DEL SR. NEPOMUCENO, V. EN

SR. NEPOMUCENO. V. Señores de la convencion: os anuncio que coy en contra de la creacion de los tribunales intermedios. La razon es porque esa criatura que se llama Tribunal de Apelacion o Tribunal Intermedio, tal como esta delinieada en el draft no respnde al fin que se han propuesto los partidarios de su creacion. Cualquiera de nosotros que ha leido el draft, estoy seguro que despues de haberlo leido esas disposiciones sobre los tribunales intermedios, habran dicho en su interior: "Esta criatura no tendra visbilidad, por decirlo asi, no merece que figure en nuestra constitucion."

No pretendo hablar mucho sobre esta materia, porque el Sr. Laurel por Batangas ha expuesto ya varios argumentos. Hablara se lamente sobre un punto. Todo mi argumento se tomara de las mismas palabras del draft. Como ya he dicho y anunciado, la razon porque estoy en contra de la creacion de los tribunales intermedios, es, porque esos tribunales no responden al fin que se h han propuesto los partidarios de su creacion. Cuando en este mismo salon de sesiones se estaban discutiendo los informes de los varios comites, tuve entonves una conversacion con un miembro del comite de ponencia, porque entonces se sabia que habia el proyecto de crear un tribunal o varios tribunales de apelacion, le pregunte la razon porque ha de crearse esa clase de tribunales y me contesto que estribaba en el hecho de que oos magistrados de la Corte Suprema estan agobiados de trabajos y hay necesidad de zl

de aligerarles del trabajo, a fin de qe puedan estudiar determinadamente las causas y sentar jurisprudencias solidad y uniformes. Dicho señor con quien tuve conversacion sobre b particular me cito luego la autoridad del actual Presidente de la Corte Supreme Sr. Avanceña, a quien atribuye la contestacion de que 95 % de los trubajos de los majistrados de la Cort Supreme lo absorve el estudio y la lectura de los pruebas orales y documentales y que hay necesidad de crear estos tribunales intermedios, a fin de que estos conozcn de las causas apeladas y sienten nuevas jurisprudencias decidiendo como es consiguiente, de las cuestiones de hecho y de derecho y reservandose naturalmente, la Corte Suprema la resolucion o la decision, por decirlo asi, de las cuestiones de derecho de tal suerte que segun dicho señor con quien tuve conversacion sobre el particular nuestra actual Corte Suprema se convertirria en un tribunal de casacion y esos tribunales intermedios serian unos verdaderos tribunales de apelacion. Yo entonces le hice una observacion diciendole que dura el gobierno de la mancomunidad tendriamos una cuarta instancia, es decir, asuntos que se someten a los juzgados de primera instancia suben luego al tribunal de apelacion o tribunal intermedio, luego iran a la Corte Suprema como tribunal de casacion y despues a la Corte Suprema de los Estados Unidos para ciertos asuntos. Aquel señor no me ha replicado nada sobre esta observacion que le hice, pero ahora que, segun el draft parece que aquel señor tuvo en cuenta mi observacion, porque en este draft, por querer salvar el inconveniente de cuatro instancias, se ha propuesto una formula que se ve traduccion en las disposiciones del articulo 10 sobre poder judicial y otros capitulos subsiguientes. Esta formula consiste en que los asuntos apelados procedentes de juzgados de primera instancia se elevara a la corte suprema de Filipinas, sin pasar mas por los tribunales intermedios para de esa manera se salve el inconveniente de cuatro instancias, que son el Juzgado de Primera Instancia, el Tribunal de Apelacion.

nal de Apelacion, la Cote Suprema de Filipins y la Corte Suprema de Estados Unidos. Este lo podemos ver mejor en el articulo 2 y leeremos esa parte para que se convenzan: "El Tribunal Supremo tendra tambien jurisdiccion para examinar, revisar, revocar, modificare confurmar, en apelacion o recurso de alzada, segun disponga la ley, las sentencias y fallos definitivos de los juzgados de primera instancia y otros tribunales, que si danen categoria a los tribunales de apelacion, que adelante se establezcan por la Asamblea Nacional Todos los asuntos civiles cuya cuantia, determinada por el juramento de cualquiera de las part tes pase de 50 mil pesos," etc. Esta clase de sauntos sobre la cuantia, segun el Articulo 27 de la Ley Jones, estan sujetos a revision por la Corte Suprema de Estadds Unidos, y, como quiere que no se puede iggorar la jurisdiccion de la Corte Suprema de Estados Unidos, porque expresamente asi esta en la ley Tydings-McDuffie, habra dicho para si: "Podemos ignorarla existencia del Tribunal de Apelaciones y asi de esa manera evitaremos cuatro instancias del juzgado de primera instancia al Corte Suprema de las Isals Filipinas y a la Corte Suprema de los Estados Unidos." Como habran visto los señores, esta Corte Suprema nuestra, que se dice se convertiria en tribunal de casacion, no se limita, segun este draft, a discutir cuestiones puramente de derecho, sino que dictara decisiones sobre cuestiones tambien de hecho, porque del juzgado de primera instancia a la Corte Suprema nuestra no tendremos remedio que resolver cuestiones de hecho y de derecho, y entonces hemos aligerado de trabajos a nuestra Corte Suprema en esta forma. Yo creo que ninguno de vosotros dira que hemos aligerado de trabajo a nuestra Corte Suprema; lo que se ha hecho aqui es crear otros tribunales y distribuir entre estos tribunales todos los asuntos, con la sola diferencia de que la mayora parte de los asuntos se llevaran a nuestra Corte Suprema y otros asuntos corresponderan a los tribunales intermedios que se trata de crear.

Estos asuntos civiles, cuya cuantia excede de cincuenta mil pesos, que ha sido la motivo por que se ha creido que conviene olvidar por un momento la existencia de los tribunales intermedios para evitar cuatro instancias, yo creo que son muchos, y si fueran pocos todavia tenmos que ver la parte segunda de este mismo inciso (e) que dice que el valor objeto de litigio no sea susceptible de estimacion pecuniaria.

Deseo advertir a los señores de la Convencion que esta palabra o frase "valor objeto de litigio" no parece una traduccion buena del texto ingles, y es mucho atrevimiento por mi parte el que yo, sin saber el ingles, me ponga a corregir una traduccion precisamente del ingles al castellano. El texto ingles, dice asi "or the subject in litigation is not capable of pecuniary estimation" que traducido literalmente quiere decir "el sujeto en litigio no es susceptible de estimacion pecuniaria," o sea, la materia litigiosa no es susceptible de estimacion pecuniaria. Pero aqui se dice "el valor del litigio no sea susceptible de estimation pecuniaria." La traduccion no es buena, debe ser "la materia litigiosa no sea susceptible de estimacion pecuniaria."

Pues, bien; cuales son estos asuntos no susceptibles de estimacion pecuniaria? Son muchos, por ejmplo, el divorcio, la legitimacion de hijos naturales, la nulidad de matrimonio, el habeas corpus, la adopcion, y otros muchos mas. Resultando de aquel que hemos recargado mas a la Corte Suprema y a los tribunales intermedios de trabajo, porque a los tribunales intermedios solamente se les asignan aquellos asuntos cuya cuantia no exceda de cincuenta mil pesos; en cambio, a nuestra Corte Suprema se le asigna no solamente el que exceda de cincuenta mil pesos, sino tambien todos aquellos asuntos cuya materia litigiosa no sea susceptible de estimacion pecuniaria.

Tambien se dice en el inciso (e) que corresponde a la Corte Suprema de estas islas el conocimiento de las causas en que se dispute la jurisdiccion de un tribunal. Aparte de que la jurisdb-

25diccion de un tribunal es siempre cuestion de hecho en la mayor parte de las veces, no veo la razon ni juridica ni filosofia para que se sustraigan estos asuntos de estos tribunales intermedios y se lleven directamente en apelacion a la Corte Suprema de las Islas Como tribunal de casacion o como tribunal ahora de apelacion. Si vamos a admitir este, y si estos casos en que se discute la jurisdiccion se sustren de estos tribunales intermedios, es muy facil para los abogados que no qieren, por ejemplo, llevar sus asuntos al tribunal intermedio, llevarlos directamente a la Corte Suprema de las Islas Filipinas suscitando una cuestion de jurisdiccion.

En el incisoo (b) tambien se atribuye a la Cote Suprema el conocimiento de las causas en que se discute la legalidad de ciertas rentas, impuesto, etc., etc. Tampoco hay razon juridica ni filosofica para que estos asuntos sesustraigan de los tribunals intermdios y se lleven directamente a la Corte Suprema de estas Islas, porque esta clase de asuntos no estan reservados por la Ley Jones a la Corte Suprema de los Estados Unidos, como asuntos sujetos a revision por dicho alto tribunal.

Como ustedes habran visto, parece ser realmente inutil, por decirlo asi, la creacion de estos tribunales intermedios, porque al fin y al cabo aligerara a nuestra Corte Suprema de los trabajos que ellos dicen que son muchos y qe absorven gran parte de su atencion en estudio solamente de las pruebas documentales y testificales. Si esto es asi, estos tribunales intermedios no sirven para al fin para el cual se han propuesto los que han creido conveniente crearlos. Y cual es ese fin? Es precisamente aligerar de trabajo a la Corte Suprema, y ahora gran parte de los trabajos a la Corte Suprema, y gran parte de los trabajos va directamente del Juzgado de Primera Instancia a la Corte Suprema de las Islas no solamente para la resolucion de las cuestiones de hecho, sino tambien de las cuestiones de derecho. De tal manera que estos tribunales intermedios y nuestra Corte Suprema, si tenemos en cuenta las provisiones del draft que distribuye los asuntos, gran parte a estos tribunales intermedios

se son precisamente dos o quizas tres; de manera que pocos asuntos que se dividiran en tres tribunales intermedios y gran parte de los asuntos que se van a discutir sobre cuestiones de hecho y de derecho iran a la Corte Suprema si prevalece esta parte de la Constitucion. Esto respecto a asuntos de apelados. Vamos ahora a la jurisdiccion originaria; Dice:

"El Tribunal Supremo tendra la jurisdiccion originaria que posee y ejerza el actual Tribunal Supremo de Filipinas al tiempo de adoptarse esta constitucion, jurisdiccion que incluira todos los asuntos que afecten a embajador y otros ministros en el extranjeros y a los consules."

Hasta ahora si esa provision esta bien hecha o mal hecha, porque en el texto castellano una preposicion "en" que no se encuentra en el texto decir "ministros extranjeros", pero tal como esta la traduccion castellana quiere decir "ministro en el extranjero." De maner que interprtando literalmente l texto ingles, parece que se refiere a los ministros extranjeros que estan en Filipinas, y atendiendo l texto castellano parece que se refiere a los ministros nuestors que estan en el extranjero. Pero sea cual fuere la traduccion, que este equivocada o se esta correcta, veo yo que habla aqui de jurisdiccion incluyendo todos los asuntos. Cuando se emplea la palabra todos los asuntos, creo qe en esta palabra todos, estan incluidos todos los asuntos civiles que pueden ser de la competencia originaria del juzgado de paz o de la competencia originaria de los juzgados de primera instancia. Esos asuntos civiles que para nosotros puede estar deptro de la competencia del juzgado de paz o del juzgado de primera instancia, ahora se dice aqui, que vienen a ser de la competencia originaria de la corte Supreme solo. Por que? Porque se refieren a los consules, a los ministros. Tenemos aquio un nuevo tribunal supreme que no s mas que tribunal de Casacion, segun los que han ideado la creacion de los tribunales intermedios. Tenemos ahora que el Tribunal supremo deciende de la altura a que se encuentra para conocer o para actuar algunos veces como juzfado de primera instancia y otros veces juzgados de paz en unica instancia. Si estos tribunales intermedios como

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aligera
acabamos de ver no xxxxxxx el trabajo de la Corte Suprema xxxx de estas Islas sino que
xxxxxxxxxxxxxxxxxxxxxxx recarga el trabajo o nuestra Corte Suprema y en cambio aligera el trabajo a los recien creados tribunales intermedios, no veo la necesidad de que existen los tribunales intermedios, xxxxxxxxx porque al fin y al cabo no responden al fin a que se ha propuesto los iniciadores de su creacion, que es precisamente al hacer de nuestro Tribunal Supremo un tribunal verdadero de casacion y a los tribunales int intermedios como tribunales de apelacion para conocer de las causas apeladas y dictar sobre cuestions de hecho y de derecho, y nuestra corte Suprema ser solamente un tribunal de Apelacion para dictar decisiones sobre cuestiones de drecho y uniformar nuestra jurisprudencia.

Este es lo que puedo decir, señores, en contra de la creacion de esos tribunales intermedios que yo creo inutil y superflua dado que remedia la situacion objeto de su creacion.

HE DICHO. (Aplauso).

MOCION ROMUALDEZ. SU APROBACION

SR. ROMUALDEZ. Sr. Presidente.

EL PRESIDENTE. Sr. Delegado por Leyte.

SR. ROMUALDEZ. Presento la mocion de que se enmiende la orden especial acordadad anoche en el sentido de votarse esta cuestion de la creacion de tribunales intermedios esta noche, y en su lugar, propongo que mañana a las siete, sea la hora en que se ha de votarse.

EL PRESIDENTE. Hay alguna objecion a la mocion. (Silencio.) La Mesa no oye ninguna. Queda aprobada.

LEVANTAMIENTO DE LA SESION

SR. ABELLA. Sr. Presidete.

SR. PRESIDENTE. Sr. Delegado por Camarines.

SR. ABELLA. Pido que se levante la sesion.

EL PRESIDENTE. Hay alguna objecion a la mocion? (Silencio). La Mesa no oye ninguna. Queda aprobada.

Eran las 7:05 p. m.